



MAR 29 2013

Dr. Robert O. Kelley  
President  
University of North Dakota  
264 Centennial Drive, Stop 8193  
Grand Forks, North Dakota 58202-8193

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Dear Dr. Kelley:

This letter is to inform you that the U.S. Department of Education (Department) intends to fine the University of North Dakota (UND) a total of \$115,000 based on the violations of statutory and regulatory requirements outlined below. This fine action is taken in accordance with the procedures that the Secretary of Education (Secretary) has established for assessing fines against institutions participating in any or all of the programs authorized under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070 *et seq.* (Title IV, HEA programs). Under the Department's regulations, the Department may impose a fine of up to \$27,500 for each violation. 34 C.F.R. § 668.84. As detailed below, this fine action is based on UND's failure to comply with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act) in Section 485(f) of the HEA, 20 U.S.C. § 1092(f), and the Department's regulations in 34 C.F.R. §§ 668.41 and 668.46.

Under the Clery Act, institutions participating in the Title IV, HEA programs must prepare, publish and distribute an Annual Security Report (ASR) by October 1 of each year. 34 C.F.R. § 668.41(e). The ASR must include a description of the institution's campus security policies in specific areas. 34 C.F.R. § 668.46(b). Specifically, the ASR must include a statement of current campus policies for making timely warning reports to members of the campus community regarding crimes, such as forcible sex offenses, and a statement of policy regarding the occurrence of crimes and policies for preparing the annual disclosure of crime statistics. 34 C.F.R. § 668.46(b)(2). In addition, the ASR must report statistics for the three most recent calendar years concerning the occurrence of certain crimes on campus, in or on certain non-campus buildings or property, and on public property. 34 C.F.R. § 668.46(c). An institution must compile and publish crime statistics for each separate campus. 34 C.F.R. § 668.46(d). The crimes that must be reported include: criminal homicide (murder and manslaughter); sex offenses (forcible and non-forcible); robbery; aggravated assault; burglary; motor vehicle theft; arson; and arrests for liquor law violations, drug law violations and illegal weapons possession. The ASR must be distributed to current students and employees and must be made available to applicants for admission and employment to provide them with accurate, complete and timely information about crime and safety on campus. 34 C.F.R. § 668.41(e). Institutions must submit the crime statistics annually to the Department, which makes them publicly available. 34 C.F.R. § 668.41(e)(5).

## Federal Student Aid

An OFFICE of the U.S. DEPARTMENT of EDUCATION

Administrative Actions and Appeals Service Group  
830 First St., N.E. Washington, D.C. 20002-8019  
StudentAid.gov

The Department conducted a program review at UND from September 14, 2010 to September 16, 2010. The focus of the review was UND's compliance with the Clery Act. The review consisted of an examination of UND's police incident reports, arrest records, disciplinary files; and policies and procedures related to the Clery Act. The review also included a comparison of the campus crime statistics submitted by UND to the Department and the crime statistics reported to students and employees as required by the Clery Act. The reviewers also interviewed institutional officials with Clery Act responsibilities.

On April 26, 2011, the Department issued a Program Review Report (PRR) to UND. The review found that UND had not complied with the Clery Act and the Department's implementing regulations. UND responded to the report on August 15, 2011. After reviewing UND's responses, the Department issued its Final Program Review Determination (FPRD) letter to UND on December 19, 2011. The FPRD is incorporated by reference into this fine action. (Enclosure 1).

The Department is taking this fine action based on the findings in the FPRD, which concluded that UND did not properly classify and report one Aggravated Assault and one on-campus liquor law violation referred for disciplinary action; failed to properly define the campus geographic boundaries for the purposes of reporting crime statistics in its 2009 ASR; and did not have the required policy statements in its calendar year 2009 ASR.

### **UND FAILED TO PROPERLY COMPILE AND DISCLOSE CRIME STATISTICS**

Under the Clery Act and the Department's regulations, institutions participating in the Title IV, HEA programs must make available statistical information related to certain reported crimes and arrest/campus disciplinary referrals for alcohol, drug and illegal weapons possession violations. The statistical information must be disclosed by location – on campus (dormitories vs. residential facilities), in or on non-campus buildings or property, and on public property – and must be provided for the three most recent calendar years. C.F.R §§ 668.46(a), 668.46(c)(1) – (c)(4).

The statistical reporting must be disclosed and made available as part of the institution's ASR by October 1 of each year, and it must be electronically submitted to the Department for its inclusion in the Campus Crime and Security Website. The Department has established timeframes within which institutions must electronically submit information. C.F.R § 668.41(e)(1)-(e)(5).

UND did not provide accurate crime statistics to its students and employees in the ASR for calendar year 2009. Specifically, case #200931055 was improperly coded as a "Simple Assault" and, therefore, omitted in UND's 2009 crime statistics. According to the incident report from the UND Police Department (UNDPD), two students, one from UND and another from Northland College, were injured during an attack. Also, according to the incident report, the first victim stated that she had been "sprayed with mace, hit, and pushed to the ground." The second victim

was also spayed with mace. In its response to the PRR, UND concurred with the Department's finding that the incident should have been coded as an Aggravated Assault and included in UND's 2009 crime statistics. Further, UND acknowledged that it under-reported one liquor law violation disciplinary referral in its calendar year 2009 crime statistics. Crime information contained in the ASR must be accurate and reliable. UND did not include the same data in the information provided to the Department and the public. Statistical data posted on the Department's website must be accurate and reliable.

The Clery Act and the Department's regulations require that institutions ensure the accuracy of the data when it is presented to students and employees who can use the data to make decisions affecting their personal safety. Students and employees must be able to rely on the institution's reported statistics. UND's correction of the crime statistics only after the Department alerted the University of its obligations does not excuse its earlier failure to comply with its legal obligations. The correction of violations does not diminish the seriousness of not correctly reporting these incidents at the time they occurred.

#### **UND FAILED TO PROPERLY DEFINE THE NON-CAMPUS BUILDINGS/PROPERTY FOR CLERY ACT PURPOSES**

The Clery Act and the Department's regulations require an institution participating in the Title IV, HEA programs to include in the crime statistics in its ASR, reported crimes that occur in areas defined as "Campus" and "Non-campus Buildings or Property," 34 C.F.R §§ 668.46(a), 668.46(c), (c)(4), (c)(8). Specifically, an institution must include crime statistics from any building or property owned or controlled by the institution within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls. 34 C.F.R § 668.46(a)(1). An institution must include the crime statistics in its ASR for each separate campus. 34 C.F.R § 668.46(d).

In complying with the statistical reporting requirements, an institution may provide a map to current and prospective students and employees that depicts its campus, noncampus buildings or property, and public property areas if the map accurately depicts its campus, noncampus buildings or property, and public property areas. 34 C.F.R. § 668.46(c)(8).

UND failed to properly define and identify its campus, non-campus property, and public property owned by or surrounding the main UND campus for Clery Act purposes. UND's self-review determined that UND did not properly define and report crime statistics for the following non-campus sites:

1. Bismarck State College: Schafer Hall, 1500 Edwards Avenue, Bismarck, ND
2. Bismarck State College: Vo-Tech Center, 1200 College Drive, Bismarck, ND
3. Turtle Mountain Community College: Admin Bldg., 10145 BIA Road 7, Bismarck, ND

4. St. Cloud State University: Centennial Hall, 201 8<sup>th</sup> St. S., St. Cloud, MN
5. Bennett Elementary School, 2000 58<sup>th</sup> Ave. S., Fargo, ND
6. Casper College: 125 College Drive, Casper, WY
7. Mayo Clinic: Stabile Building, Room 3-31, 200 1<sup>st</sup> St. SW, Rochester, MN
8. Minot Center for Family Practice: 1201 11<sup>th</sup> Ave SW, Minot, ND
9. Bismarck Family Practice Center: 515 East Broadway, Bismarck, ND
10. Fargo VA Hospital/UND Medical Education: 1919 Elm St, Fargo, ND
11. Belfield Anthropology Building: 107 2<sup>nd</sup> St SW, Belfield, ND
12. Altru Hospital Property: Altru Health System: 1200 South Columbia Rd, Grand Forks, ND
13. Space Studies Observatory: Oakville Observatory Site, 1652 23<sup>rd</sup> St NE, Emerado, ND
14. Airport Leased Building: Grand Forks International Airport, 2787 Airport Dr., Grand Forks, ND
15. Dakota Hall: 1050 North 43<sup>rd</sup> Street, Grand Forks, ND
16. Ralph Engelstad Arena: One Ralph Engelstad Arena Drive, Grand Forks, ND
17. Alerus Center: 1200 S. 42<sup>nd</sup> St., Grand Forks, ND
18. Apollo Park, 2511 17<sup>th</sup> Ave S., Grand Forks, ND

#### **UND'S 2009 ASR DID NOT INCLUDE REQUIRED POLICY STATEMENTS**

The Department's regulations require that participating institutions prepare an ASR that contains the institution's statement of current campus policies for making timely warning reports to members of the campus community regarding crimes, such as forcible sex offenses; policies for preparing the annual disclosure of crime statistics; policies encouraging prompt reporting of crimes to the police; statements with a description of type and frequency of campus safety programs; a description of crime prevention programs; a statement explaining the importance of preserving evidence in cases of alleged sex crimes and an explanation of how to preserve the evidence; and a statement that describes procedures on voluntary, confidential reporting of crimes. 34 C.F.R. § 668.46(b)(2).

UND's 2009 ASR lacked critical information required by 34 C.F.R 668.46(b)(2). The ASR did not contain a statement of current campus policies for making timely warning reports to members of the campus community regarding crimes, such as forcible sex offenses; and policies for preparing the annual disclosure of crime statistics. UND has since revised its policies and its statements regarding campus safety to address policies that were not previously included. However, the institution's revisions and additions do not excuse UND's failure to have required policy statements in its 2009 ASR, as required by the Clery Act and the Department's regulations.

In determining the amount of a fine, the Department considers both the gravity of the offense and the size of the institution. 34 C.F.R § 668.92. Pursuant to the Secretary's decision In the Matter of Bnai Arugath Habosem, Docket No. 92-131-ST (August 24, 1993), the size of an institution is

based on whether it is above or below the median funding levels for the Title IV, HEA programs in which it participates. The latest year for which complete funding data is available for UND is 2010-2011 award year. According to the Department records, UND received approximately \$10,635,481 in Federal Pell Grant (Pell) funds, \$72,331,176 in Federal Direct Loan funds and \$4,572,902 in Campus-Based funds. The latest information available to the Department indicates that the median funding level for institutions participating in the Federal Pell Grant program is \$1,831,456, for institutions participating in the Federal Direct Loan programs, the median funding level is \$3,415,923, and for institutions participating in the Campus-Based programs, the median funding level is \$272,450. Accordingly, UND is a large institution because its funding levels for Federal Pell Grant, Federal Direct Loan, and Campus-Based funds exceeds the median funding levels for those Title IV, HEA programs.

As detailed in this letter, UND's violations of the Clery Act are serious and numerous. These failures endangered UND's students and employees who must be able to rely on the disclosures of campus crime statistics, policies and statements, and the accurate reporting of crimes and statistics to take precautions for their safety. Moreover, the Department considers an institution's compliance with the Clery Act requirements to be part of its administrative capability, and UND's failure to comply with those requirements constitutes an inability to administer properly the Title IV programs.

After considering the gravity of the violations and size of the institution, I have assessed a fine of \$27,500 for UND's failure to properly classify and report one (1) Aggravated Assault. I have assessed \$5,000 for UND's failure to properly classify and report One (1) on-campus liquor law violation referred for disciplinary action, for calendar year 2009. These are serious violations because UND's ASR and crime statistical data submitted to the Department were incorrect, misleading, and unreliable.

I have assessed a fine of \$27,500 for UND's failure to properly define the campus geographic boundaries and compile the crime statistics for noncampus property. UND acknowledged that eighteen (18) of its noncampus locations were not included in its 2009 ASR. This is a serious violation because current and prospective students and employees were denied accurate information to make informed safety decisions. Current and prospective students and employees cannot be expected to rely on statistical data, with regard to crime scenes, when information available to them improperly defines noncampus property. A maximum fine is appropriate in this case.

I have assessed a fine of \$27,500 for UND's failure to include in its 2009 ASR a statement of current campus policies for making timely warning reports to members of the campus community regarding crimes, such as forcible sex offenses. UND's failure to have this policy statement is a serious violation of the Clery Act because it is essential that the campus community be informed on how they will receive timely warnings of potentially dangerous

Dr. Robert O. Kelley  
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situations. Recent experiences have demonstrated that timely warning policies are a vital part of an institution's campus crime and security policies and procedures.

I have assessed \$27,500 for UND's failure to include in its 2009 ASR a statement of policies for preparing the annual disclosure of crime statistics. This is a serious violation because current students and employees, and potential students and employees cannot be expected to rely on statistical data when they have not been provided with the necessary information to understand the policies and procedures for preparing the statistical data. A maximum fine for each missed policy statement is appropriate.

The fine of \$115,000 will be imposed on **April 18, 2013**, unless I receive, by that date, a request for a hearing or written material indicating why the fine should not be imposed. UND may submit both a written request for a hearing and written material indicating why a fine should not be imposed. If UND chooses to request a hearing or submit written material, you must write to me at:

Administrative Actions and Appeals Service Group  
U.S. Department of Education  
Federal Student Aid/Program Compliance  
830 First Street, NE – UCP-3, Room 84F2  
Washington, DC 20002-8019

Upon receipt of such a request, the case will be referred to the Office of Hearings and Appeals, which is a separate entity within the Department. That office will arrange for assignment of UND's case to a hearing official who will conduct an independent hearing. UND is entitled to be represented by counsel at the hearing and otherwise during the proceedings. If UND does not request a hearing but submits written material instead, I will consider that material and notify UND of the amount of fine, if any, that will be imposed.

**ANY REQUEST FOR A HEARING OR WRITTEN MATERIAL THAT UND SUBMITS MUST BE RECEIVED BY APRIL 18, 2013; OTHERWISE, THE \$115,000 FINE WILL BE EFFECTIVE ON THAT DATE.**

Dr. Robert O. Kelley  
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If you have any questions or desire any additional explanation of UND's rights with respect to this action, please contact Lawrence Mwethuku of my staff at 202/377-3684.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mary E. Gust".

Mary E. Gust, Director  
Administrative Actions and Appeals Service Group  
Federal Student Aid/Program Compliance  
U.S. Department of Education

Enclosure

cc: Dr. Sylvia Manning, President, the Higher Learning Commission (HLC), via  
[info@hlcommission.org](mailto:info@hlcommission.org)  
Mr. Duaine Espegard, President, North Dakota State Board of Higher Education, via  
[Duaine.Espegard@ndus.edu](mailto:Duaine.Espegard@ndus.edu)